

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
ENTERED

APR 27 2004

Michael N. Milby, Clerk of Court

In Re ENRON CORPORATION §
SECURITIES, DERIVATIVE & § MDL 1446
"ERISA" LITIGATION, §

MARK NEWBY, ET AL., §
§
Plaintiffs §

VS. § CIVIL ACTION NO. H-01-3624
AND CONSOLIDATED CASES

ENRON CORPORATION, ET AL., §
§
Defendants §

PIRELLI ARMSTRONG TIRE §
CORPORATION RETREE MEDICAL §
BENEFITS TRUST, Derivatively §
on behalf of Enron Corporation, §
§
Plaintiff, §

VS. § CIVIL ACTION NO. H-01-3645
LEAD CASE CONSOLIDATED WITH

KENNETH L. LAY, ROBERT A. §
BELFER, NORMAN P. BLAKE, JR., §
RONNIE C. CHAN, JOHN H. DUNCAN, §
WENDY L. GRAMM, ROBERT K. §
JAEDICKE, CHARLES A. LEMAISTRE, §
JOHN MENDELSON, PAULA V. §
FERRAZ PEREIRA, FRANK SAVAGE, §
JOHN WAKEHAM, HERBERT S. §
WINKOKUR, JR., ANDREW S. §
FASTOW, AND ENRON CORPORATION, §
an Oregon Corporation, §
§
Defendants §

WILLIAM E. YOUNG AND FRANK §
CONWAY, §
§
Plaintiffs, §

VS. § CIVIL ACTION NO. H-04-1546

ROBERT A. BELFER, ET AL., §
§
Defendants. §

The above referenced putative class action, *William E. Young, et al., on Behalf of Themselves and all Others Similarly Situated, v. Robert A. Belfer, et al.*, H-04-1546, was removed from the Circuit Court of Cook County, Chancery Division to the United States Bankruptcy Court for the Northern District of Illinois, and then transferred by the Judicial Panel on Multidistrict Litigation for coordination or consolidation with proceedings in MDL 1446. The Amended Class Action Complaint, on which this action was removed, is brought on behalf of all shareholders of Enron common and preferred stock who continued to hold that stock from April 13, 1999 through November 8, 2001, allegedly because of false and misleading statements by Defendants relating to Enron's financial condition and business status. The amended complaint seeks damages for negligence, negligent misrepresentation, common law fraud, breach of fiduciary duty, and aiding and abetting a breach of fiduciary duty.

Defendants removed this action to the bankruptcy court, after Plaintiffs filed their amended complaint, based on (1) "related to" bankruptcy jurisdiction under 28 U.S.C. §§ 1334(b) and 1452 and (2) the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"), Pub. L. No. 105-353, 112 Stat. 5227, 15 U.S.C. §77p(c) and 78bb(f)(2) and 28 U.S.C. §§ 1331, 1441(a), and 1446. Counsel for Defendant Charles A. LeMaistre argues that because Plaintiffs' claims are "holder" claims based on the diminution in value of Enron securities, they are shareholder derivative claims

and should be consolidated with *Pirelli* and administratively closed in accordance with this Court's order of August 16, 2002, *Rick Barsky v. Arthur Andersen, et al.*, #12 in H-02-1922. Alternatively Defendants claim this Court has supplemental jurisdiction over this action under 28 U.S.C. § 1367 because the claims are interrelated with claims already within this Court's jurisdiction and arise from the same case or controversy as those alleged in *Newby* and *Pirelli*.

Pending before the Court in H-04-1546 are Bank Defendants' motion to stay proceedings pending a final decision by the Judicial Panel on Multidistrict Litigation regarding the transfer to this Court (instrument #14) and Plaintiffs William E. Young and Frank Conway's motion to remand (#25). The Court

ORDERS that the motion to stay proceedings is MOOT. Because Defendants have not had an opportunity to respond to the motion to remand, and because a resolution of the issues it raises will determine whether this action will be remanded, dismissed, or consolidated with *Newby* or *Pirelli*, the Court

ORDERS that Defendants shall file responses within twenty days of receipt of this order. If Plaintiffs wish to file a reply, they shall do so within ten days of receipt of those responses. Meanwhile, to insure that counsel receive copies of all relevant pleadings, notices and orders, the Court

ORDERS that H-04-1546 is hereby COORDINATED with MDL 1446, *Newby*, and *Pirelli* and shall be so listed by the Clerk on the docket sheets. The Court further

ORDERS that the Notice of Consolidation with *Pirelli* (#39), filed by counsel for Defendant Charles A. LeMaistre, is of no effect because that determination has yet to be made by the Court.

SIGNED at Houston, Texas, this 26th day of April, 2004.

A handwritten signature in cursive script, appearing to read "Melinda Harmon", written over a horizontal line.

MELINDA HARMON
UNITED STATES DISTRICT JUDGE